

REMARKS

Reconsideration of the subject application in view of the present amendments and remarks is respectfully requested. All rejections and objections are respectfully traversed.

In the Claims

Applicant has amended claims 1, 11, 21 and 31 herein. No new matter is introduced within these amendments, wherein support for the amendments to claims 1 and 11 is found in the subject application, as filed at least at page 5, paragraph 35 and page 8, paragraph 47, and wherein support for the amendments to claims 21 and 31 is found in the subject application, as filed, at least at page 6, paragraph 37 and page 8, paragraph 4.

Applicant has amended claims herein solely to expedite prosecution of this application. In doing so, Applicant does not dedicate the subject matter of the amended claims, as originally filed or as previously pending, to the public, and does not acquiesce to the Examiner's current or previous reason(s) offered in support of the rejections of the amended claims or any claim(s) that depend(ed) therefrom. Applicant reserves the right to seek patent protection for claims similar or identical to the amended claims, as originally filed and/or as previously pending, in one or more subsequently filed and related applications.

Rejections Under 35 U.S.C. § 102

Claims 1, 5, 6, 8, 10, 11, 15, 16, 18, 20, 21, 25-27, 30, 31, 35-37 and 40-45 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Frerichs, U.S. Patent 6,684,249. Applicant respectfully traverses the rejection.

Independent claim 1 of the subject application, as amended, is directed to a “system for audio streaming.” The system comprises “an audio streaming server providing an audio stream” and a “client including a buffer storing at least portions of said audio stream received from said audio streaming server.” A buffer status sensor is operative to “monitor a rate of playback of the contents of said buffer, and to monitor a rate of said audio stream to determine if said audio stream is delayed or slowed down.” The buffer status sensor includes “an audio sampler for sampling portions of said audio stream” and the buffer status sensor is “identifying one or more locations in

said audio stream where an audio segment could be inserted when said audio stream is determined to be delayed or slowed down.” Further, a client audio output inserter is “operative in response to an output from said buffer status sensor for providing a modified audio stream output including pre-recorded audio segments, which were not received from said audio streaming server, inserted at one or more of said audio stream locations identified by said buffer status sensor.”

Frerichs is directed to a method for inserting advertisements into streaming audio for transmission over a worldwide network of computers. (Abstract). Frerichs discloses a method including the steps of providing audio data for first and second songs and providing a flag comprising advertisement indication and delay information at the server location. (Column 6, lines 20-24). The flag is added onto the first song such that it is between the first and second songs at the server and then the flagged first and second audio data are transferred from a server location to a client location as streaming audio. (Column 6, lines 24-30). An advertisement is then selected based upon a user profile and inserted into the streaming audio, i.e., at the flagged location after the first song, and the streaming audio, including the advertisement, is processed such that the first song is output through an audio output device followed by the advertisement and then followed by the second song. (Column 6, lines 31-33). Frerichs teaches that the flag includes data that indicates where an advertisement is to be inserted and often has other information such as the length of the advertisement and the current content type. (Column 7, lines 1-5). Thus, in accordance with Frerichs, a method monitors the streaming audio looking for the flag and once the flag has been found, the advertisement is inserted between the first audio data and the second audio data. (Column 7, lines 48-51).

Applicant respectfully submits that independent claim 1, as amended, is patentable over Frerichs for at least the reason that there is no disclosure, teaching or suggestion in Frerichs of at least the claim 1 limitations of a buffer status sensor operative to “determine if said audio stream is delayed or slowed down” and for “identifying one or more locations in said audio stream where an audio segment could be inserted when said audio stream is determined to be delayed or slowed down,” and a client audio output inserter is “operative in response to an output from said buffer status sensor for providing a modified audio stream output including pre-recorded audio segments,

which were not received from said audio streaming server, inserted at one or more of said audio stream locations identified by said buffer status sensor.”

Frerichs’ approach, in contrast, does not make an insertion based on a delay or slowing of an input stream. Rather, Frerichs calls for placing the advertisements at a location where a flag or marker has been placed between two songs. Frerichs is devoid of any teaching or suggestion of identifying a gap as a function of the stream rate as is disclosed and claimed. An advantage of the presently disclosed and claimed system is that gaps that occur at unpredictable points in the audio stream may be detected and pre-recorded audio segments, such as advertisements, can be inserted. Frerichs, which provides no disclosure for gap detection, is limited to ad insertion only at the flagged locations. Thus, the presently claimed invention permits the utilization of unpredictably occurring gaps, whereas Frerichs does not. Accordingly, for at least these reasons, Applicant submits that claim 1 is not anticipated by (or, for that matter, obvious in view of) Frerichs.

In addition, Applicant submits that claims 5, 6, 8, 10, 41 and 43 are also allowable for at least the reason that they depend directly from independent claim 1, which is believed to be allowable for at least the reasons set forth above.

Independent claim 11, as amended, is directed to a “method of audio streaming.” Applicant submits that based on the language of claims 11 and 1, as well as on the current rejection of these claims, the remarks set forth above with respect to Frerichs in the context of the rejection of claim 1 are also applicable to the rejection of claim 11.

More specifically, claim 11, as amended, is allowable over Frerichs for at least the reason that Frerichs does not disclose, teach or suggest “monitoring a rate of said audio stream to determine if said audio stream is delayed or slowed down” and “identifying one or more locations in said audio stream where an audio segment could be inserted when said audio stream is determined to be delayed or slowed down,” and then “providing a modified audio stream, which includes inserting pre-recorded informational audio segments, which were not received in said audio stream, at one or more of said audio stream locations identified by an output from said monitoring,” as recited in claim 11.

As discussed above in connection with claim 1, Frerichs places advertisements between songs, i.e., at flagged locations, and provides no disclosure, teaching or suggestion of identifying a

gap as a function of changed audio stream rates as recited in claim 11, as amended. Accordingly, claim 11 is not anticipated by (or, for that matter, obvious in view of) Frerichs and allowance of claim 11 is respectfully requested.

In addition, Applicant submits that claims 15, 16, 18, 20, 42, and 44 are also allowable for at least the reason that they depend directly from independent claim 11, which is believed to be allowable for at least the reasons set forth above.

Independent claim 21, as amended, is directed to “a system for seeking in an audio stream” where the system comprises an “audio streaming server providing an audio stream” and an “audio sampler.” The audio sampler is provided for “sampling said audio stream and identifying temporally non-adjacent portions of said audio stream in a sequential order as found in the audio stream.” Further, an audio stream portion navigating seeker is “operative to sequentially play said identified portions in said sequential order and operative to insert at least one informational audible tone among said played portions.”

As set forth above, Frerichs is a system for inserting an advertisement in an audio stream between two songs, i.e., after the first song has finished the advertisement will play followed by the second song.

Applicant respectfully submits that independent claim 21, as amended, is allowable over Frerichs for at least the reason that Frerichs does not disclose, teach, or suggest an audio sampler that is “sampling said audio stream” and “identifying temporally non-adjacent portions of said audio stream in a sequential order as found in the audio stream.” Further, Frerichs does not disclose, teach or suggest an audio stream portion navigating seeker operative to “sequentially play said identified portions in said sequential order and operative to insert at least one informational audible tone among said played portions.”

As the Applicant has described in the specification of the subject application, seeking through an audio stream is facilitated by, for example, playing “one phrase in every eight phrases of the audio sample.” (Page 8, paragraph 49). Thus, by playing phrases or portions of the audio sample that are temporally non-adjacent to one another, i.e., “spread out,” a user may be better able to establish or identify a current location within the audio stream.

The current Office Action, page 3, last paragraph, refers Applicant to portions of Frerichs with the allegation that Frerichs is teaching a system and method for seeking in an audio stream. Applicant respectfully submits, however, that the portions of Frerichs that are cited are directed to the insertion of an advertisement after a first song and before a second song, as discussed above. Rather, based on Applicant's reading of Frerichs, it does not disclose or suggest either sampling an audio stream nor identifying temporally non-adjacent portions thereof and then playing back those sampled portions with audible tones inserted among them.

Applicant respectfully submits that Frerichs does not disclose, teach or suggest "identifying temporally non-adjacent portions" of an audio stream in "a sequential order" and "playing said identified portions in said sequential order." Moreover, sampling and playing back portions of the audio stream in the context of the system of Frerichs would disrupt the user's experience. Accordingly, for at least the foregoing reasons, Applicant submits that claim 21 is not anticipated by (or, for that matter, obvious in view of) Frerichs, and allowance of claim 21 is respectfully requested.

In addition, Applicant submits that claims 25-27 and 30 are also allowable for at least the reason that they depend directly from independent claim 21 which is believed to be allowable for at least the reasons set forth above.

Independent claim 31, as amended, is directed to "a method of seeking in an audio stream." Applicant submits that based on the language of claims 31 and 21, as well as on the current rejection of these claims, the remarks set forth above with respect to Frerichs in the context of the rejection of claim 21 are also applicable to the rejection of claim 31.

More specifically, claim 31, as amended, is allowable over Frerichs for at least the reason that Frerichs does not disclose, teach or suggest, sampling an audio stream, "wherein said audio sampling identifies temporally non-adjacent portions of said audio stream in a sequential order as found in said audio stream" and "playing said identified portions in said sequential order, and inserting at least one informational audible tone among said played portions," as recited therein.

Frerichs does not disclose, teach or suggest sampling and playing back of temporally non-adjacent portions of an audio stream. Moreover, as discussed above, in connection with claim 21, to sample and playback portions of an audio stream would disrupt the audio playback in the Frerichs

system. Accordingly, Applicant submits that for at least this reason claim 31 is not anticipated by (or, for that matter, obvious in view of) Frerichs; allowance of claim 31 is respectfully requested.

In addition, Applicant submits that claims 35-37, 40 and 45 are also allowable for at least the reason that they depend directly from independent claim 31, which is believed to be allowable for at least the reasons set forth above.

In view of the foregoing, Applicant believes the pending claims are in condition for allowance and a notice to this effect is earnestly solicited. The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application. The Examiner is hereby authorized to charge any fees due to this submission, or credit any balance, to Deposit Account No. 23-0804.

Respectfully submitted,

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